

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

New York State Teamsters,

Plaintiff,

-v.-

5:04-CV-00847
(NPM)

Syracuse Movers, Inc.,

Defendant.

New York State Teamsters Conference
Pension & Retirement Fund,

Plaintiff,

-v.-

5:05-CV-00060
(NPM)

Syracuse Movers, Inc.,

Defendant.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

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FOR THE DEFENDANTS:

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Robert A. Feinberg
Terry J. Kirwan, Jr.

Neal P. McCurn, Senior District Judge

ORDER

By Report and Recommendation dated February 16, 2006 (“the Report”), Magistrate Judge Peebles has recommended that the answer in each of the above captioned cases by defendant, Syracuse Movers, Inc., be stricken and that defendant’s default be entered in accordance with Fed. R. Civ. P. 37(b)(2)(C). The Report is presently before the court for review.

When reviewing a magistrate’s recommendation regarding a dispositive matter, the court “shall make a de novo determination of those portions of the report . . . or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1)(C) (2005). See also Fed. R.Civ. P. 72(b); Lacey v. Yelle, No. 96-CV-1714, 1998 WL 22068, at *2 (N.D.N.Y. Jan. 14, 1998). Despite Judge Peebles’ notice that failure to object to the Report within 10 days will preclude appellate review, no objection was filed. As such, whether to conduct a de novo review of the Report in this instance is within the court’s discretion. See Richards v. United States Postal Service, No. 88-C-6200, 1990 WL 103627, at *1 (N.D. Ill. June 25, 1990), citing Webb v. Califano, 468 F.Supp. 825 (E.D. Cal. 1979). See also Howard v. Sec. of Health and Human Servcs., 932 F.2d 505, 509 (6th Cir. 1991). With that in mind, and after a careful review of the record, the court adopts the conclusions of the magistrate in full.

Therefore, it is ORDERED that the answer in each of the above captioned cases be STRICKEN, and that defendant’s default be entered, with a directive that plaintiff file a motion for default judgment within thirty (30) days after entry of this order.

IT IS SO ORDERED.

DATED: March 7, 2006
Syracuse, New York

Neal G McCurn

Neal P. McCurn
Senior U.S. District Judge